

House Bill 5113, An Act Concerning Surety Bonds in Contracts for Public Projects

Government Administration and Elections Committee

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My name is James Mercier. I am a partner in the Hartford office of the law firm of McCarter & English LLP, a member of the firm's Construction Practice Group, and have over twenty years of experience working with members of the construction industry to evaluate and structure contracts and resolve disputes regarding public and private construction projects. In particular, I have extensive experience with payment and performance bond disputes and construction claims and have investigated and resolved bond claims in various capacities in private practice and within surety companies.

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House Bill 5113, An Act Concerning Surety Bonds in Contracts for Public Projects, authorizes the state or municipalities to choose not to require a payment bond from contractors for public works projects costing more than \$100,000. I am **opposed** to House Bill 5113, and I respectfully request that the committee not act on the bill.

House Bill 5113 eliminates the mandatory requirement for the provision of payment bonds which has existed in Connecticut since 1949, when our state adopted what has become Connecticut General Statutes §49-41. The bill should not be adopted because it would deprive the citizens of the State of Connecticut and those who do business with the state and our cities and towns of the statutory payment bonds that are often instrumental in securing payment on public construction projects in Connecticut. The bill would also have the unintended consequences of reducing potential bidders for public work and increasing the cost of public construction projects.

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Requiring payment bonds for public construction has a long history in the United States dating back to 1894 and the federal Heard Act, followed by the federal Miller Act in 1935. Those federal statutes recognized that on public construction projects, subcontractors and suppliers of labor and materials do not have the traditional mechanic's lien remedies available to them on private construction projects. The federal Miller Act, and the so-called "Little Miller Acts" enacted in Connecticut and across the country provided on public projects the much-needed replacement for lien rights to secure payment on private work.

Payment bonds on public construction projects are critically necessary to the success and well-being of subcontractors and suppliers doing business in Connecticut to overcome the result in National Fireproofing vs. Huntington, 81 Conn. 632 (1909), in which the Connecticut Supreme Court established that contractors have no right to claim liens on public projects, and in O&G Industries,

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Inc. v. Town of New Milford, 229 Conn. 303 (1994), in which the state Supreme Court refused recovery to a supplier which claimed that a town was liable for payment for labor and materials supplied to a public project as a result of the town's failure to secure the payment bond required by Connecticut General Statutes §49-41.

House Bill 5113 would not only cause injury to the resident and non-resident subcontractors and suppliers who build our roads, schools, city halls and other public projects, but it would set Connecticut apart as the only state in the nation that does not require the provision of payment bonds on public construction projects.

Thank you for the opportunity to submit comments on the bill. Please feel free to contact me at (860) 275-6784 if you have any questions or if you need additional information.